RESERVED

Criminal Appeal No.33 of 2001

Mahesh Chandra ..... Appellant

Versus

State of Uttaranchal ..... Respondent

...

Hon.A.A.Desai,C.J.
Hon.M.C.Jain,J.

(Delivered by Hon. M.C.Jain,J.)

Accused-appellant Mahesh Chandra and one another Nand Kishore alias Nandu were tried for the offence punishable u/s 302,I.P.C. read with section 34,I.P.C. in Sessions Trial No. 32 of 2000 before the Sessions Judge, Pauri Garhwal. By the judgment dated 28.02.2001, the learned trial Court acquitted Nand Kishore alias Nandu, but convicted the accused-appellant Mahesh Chandra u/s 302,I.P.C. read with section 34,I.P.C. and sentenced him to undergo life imprisonment for the murder of one Chandra Mohan Kohli. Aggrieved, he has preferred this appeal.

Board spectrum of the case and the evidence may be detailed for proper appreciation. The incident allegedly took place in between the night of 7/8-4-2000 in village Gandriyakhal, within P.S.Kotdwara, district Pauri Garhwal. The report of the incident was lodged by one Rajendra Prasad Sati at the concerned police station on 8.4.2000 at 10.30 a.m. stating that on being informed that the dead body of Chandra Mohan Kohli was lying in the house of the accused-appellant Mahesh, he went there with certain other persons. He found that the dead-body of Chandra Mohan Kohli was lying inside the house of the accused-appellant Mahesh on a cot with an injury on his head. The F.I.R. further stated that the deceased has purchased one Bighaland from Anand Mani sometime back. Anand Mani is the husband on the sister of the accused Mahesh. It was further mentioned in the F.I.R.

that on 7.4.2000 deceased Chandra Mohan Kohli, the accused- appellant Mahesh and co-accused Nand Kishore alias Nandu had consumed liquor at the house of Anand Mani during the day time. At about 10 p.m. the deceased Mahesh and Nandu went to the house of the accused Mahesh where his dead body was found. The deceased Chandra Mohan used to walk with the help of crutches that were found lying broken in the way leading to the house of the accused-appellant Mahesh. A suspicion was expressed in the F.I.R. that probably ' Mar-Pit ' took place in the way. Consequent upon the lodging of such F.I.R. a case u/s 302,I.P.C. was registered against unknown persons and the police entered into investigation. This was conducted by P.W.9- B.R. Arya, who was S.H.O. of P.S.Kotdwar at the relevant time. The Panchnama of the dead body of the deceased and other connected papers were prepared by P.W.8 S.I. Govind Ballabh Joshi. Blood stained and simple earth had been collected from the way shown by letter 'C' in the site-plan. The dead-body of the deceased was sent for post mortem which was conducted on 9.4.2000 by P.W.7 Dr. K.G. Sanwiya. The deceased was aged about 43 yrs. and was of average built. About 1½ day has passed since he died. a lacerated wound 1 cm. X 1 cm. X bone deep on the left side of the parietal region 5 cm. above left ear was found as ante mortem injury on the person of the deceased. On internal examination, skull was found fractured over left parietal region. Brain was also found lacerated and contused with clotted blood on left side. The cause of death was shock and haemorrhage as a result of ante mortem injury.

The defence of accused-appellant was of complete denial. According to him, the dead body of the deceased had not been recovered from his house.

The prosecution examined nine witnesses in support of its case besides relying upon the documentary evidence

but none was examined by the accused- appellant in his defence. The case was of circumstantial evidence, there being no eye witness of the incident.

We have heard learned counsel for the accused-appellant and the learned A.G.A. The evidence on record has also been carefully perused by us. It is found that the prosecution relied upon a number of circumstances to bring home the guilt of the accused-appellant. The circumstances were these: The deceased had illicit relations with Mahesh's sister married to Anand Mani; on 7.4.2000, deceased, co-accused Nand Kishor alias Nandu and Anand Mani consumed liquor at the house of Anand Mani; at about 10 p.m. on 7.4.2000, the accused Mahesh and co-accused Nand Kishore alias Nandu were seen going towards the house of Mahesh-accused; on 8.4.2000, the accused Mahesh made extra judicial confession before p.w.1 Anand Mani of having murdered the deceased and that the dead-body of the deceased was found inside the house of the accused Mahesh on a cot.

The disturbing feature of the case is that as discussed by the learned Session Judge, the first four circumstances stated above could not be proved as most of the witnesses examined in relation thereto turned hostile and did not support the prosecution case. However, the learned Sessions Judge relied upon the last circumstance of the recovery of the dead-body of the deceased from the house of the accused-appellant Mahesh as clinchingly establishing him to be guilty of the murder of the deceased obviously, the question for determination is as to whether the said circumstances was established by the evidence on record the same could be relied upon as conclusively establishing the guilt of the accused as being the murderer of the deceased.

Needless to say, the principles regarding circumstantial evidence are well settled that circumstances relied upon must be firmly established and the same must unerringly point to the guilt of the accused. They should form a complete chain indicating that the accused alone and non else committed the crime.

In the present case, we find that there is no independent corroboration of the fact that actually the dead-body of the deceased was recovered from the house of the accused- appellant Mahesh. Two public witnesses,namely, P.W.4 Krishananand and P.W.5 Lallu Singh were examined in this regard. However, both of them, too, had to be declared hostile. Though they admitted to have signed the Panchnama of the recovery of the dead body of the deceased, but denied that the recovery of the dead-body was made from the house of the accused-appellant Mahesh. According to them, the dead-body had actually been recovered from the field which was at a distance of 100 meters from the house of the accused-appellant. The matter turns only on the evidence of police personnel P.W.B. S.I. Govind Ballabh Joshi and P.W.9 S.H.O. B.R.Arya, who asserted that the dead body had been recovered from the house of the accused from a cot. But, as stated above, there is no corroboration of their version from independent sources. There is a popular adage that the witnesses may lie but circumstances will not. In the present case, there is serious doubt as to the recovery of the dead-body of the deceased from the house of the accused-appellant Mahesh. It is pertinent to state that as per the testimony of P.W.8 S.I. Govind Ballabh Joshi, and P.W.9 S.H.O. Sri B.R.Arya also, no blood had been recovered from near the dead-body or spot of occurrence, which according to them, was the house of the accused-appellant. It also flows from

the scrutiny of their evidence and site plan that blood had been found at spot 'C' on the path-way. Broken part of the crutches of the deceased had been found at places 'a' and 'B' in a field in the vicinity of the pathway. The distance of the house of the accused-appellant is about 1 km. from the pathway. It goes unexplained as to how could dead-body be found at the house of the accused- appellant if the actual assault had taken place in the way at a distance of about 1 km. from the house of the accused-appellant where blood and broken pieces of crutches of the deceased had been found. The bristles against natural human conduct that after assaulting the victim in the way and breaking his crutches, the accused-appellant could or would have taken the victim to his own house in living or dead condition, covering a distance of about 1 km. to create evidence against himself. It has also to be taken note of that there was no trickling of blood in the way. The reasoning adopted by the learned Sessions Judge is that after assaulting the victim in the way the accused-appellant escaped whereafter the victim in an injured condition reached his house in his search and not finding him there, he (victim) laid down on the cot and died. it was in this way that his dead-body came to be recovered therefrom. This does not bear logic or reason. As pointed out earlier, there was no trickling of blood in the way.

Moreover, it should be recalled that the victim used to walk with the help of crutches which were found lying broken in the field by the side of the pathway at the distance of about 1 km. from the house of the accused-appellant. It is against the inherent proba-bilities of the situation that after having been injured by the accused-appellant in the way, he(victim) could have gone to the house of the accused- appellant covering a distance of about 1 km. without even the help or crutches, incurring further risk to his life.

Therefore, on a careful analysis in an adjudicatory manner we are of the firm view that the circumstance of the dead-body of the deceased having been recovered from the house of the accused-appellant can not be accepted as established beyond reasonable doubt. This circumstance alone, which itself is doubtful, does not prove the accused- appellant to be guilty or murder of deceased. The chain is not at all complete. Solitary doubtful circumstance of the alleged recovery of the dead-body of the deceased from the house of the accused-appellant can not form the basis of conviction of the accused- appellant.

In point of fact, the case has not travelled from the range of suspicion to the realm of certainty. To come to close, we are of the firm opinion that the single circumstance relied upon by the learned Sessions Judge to convict the accused-appellant is doubtful. It is a case where benefit of doubt should be afforded to the accused-appellant. He deserves acquittal.

In the result, we allow this appeal and set aside the impugned judgment and order passed by the learned Sessions Judge. The accused-appellant Mahesh Chandra is hereby acquitted. He is in jail. He shall be set at liberty, if not wanted in any other connection.

Let a copy of the judgment alongwith record of the case be immediately sent to the Court below for needful action and incorporating necessary entries in the concerned register under intimation to this Court within two months positively.

(M.C.Jain, J.) **(A.A.Desai, C.J.)**

August 17,2001

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